



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 26, 1996

Ms. Elizabeth C. Lara
Legal Assistant
Legal and Compliance, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR96-2223

Dear Ms. Lara:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102120.

The Texas Department of Insurance (the "department") received a request for information concerning Glenda Williams, an insurance agent. The department has provided some of the information to the requestor. You contend that the remaining information is excepted from disclosure pursuant to sections 552.103, 552.107, and 552.111 of the Government Code. You have submitted representative samples of the information at issue to this office for review.¹

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

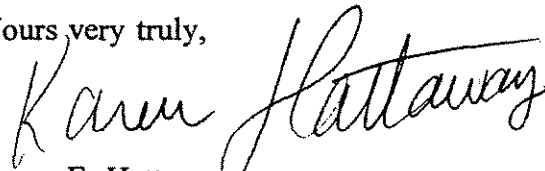
subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). A contested case under the Administrative Procedure Act is litigation for purposes of section 552.103. Open Records Decision No. 588 (1991). Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982).

You state that some of the information at issue relates to the department's ongoing investigation of Ms. Williams for alleged violations of state insurance laws. You further state that the department anticipates that "this investigation will culminate in an administrative contested case" against Ms. Williams. Under these circumstances, we conclude that the department reasonably anticipates litigation, and the information at issue relates to the anticipated litigation. Accordingly, the department may withhold the information from disclosure under section 552.103.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision.³ This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

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²We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information at issue, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Of course, the department has discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

³Because we have concluded that the department may withhold the information at issue pursuant to section 552.103, we need not address the other exceptions to disclosure that the department has raised at this time.

Ref: ID# 102120

Enclosures: Submitted documents

cc: Ms. Barbara Calk
Claims Specialist
State Farm Insurance Companies
P.O. Box 796216
Dallas, Texas 75379
(w/o enclosures)